

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 1:11-cr-099

Also Case No. 1:13-cv-123

-vs-

Chief Judge Susan J. Dlott

Magistrate Judge Michael R. Merz

:

RODNEY RIDDLE,

Defendant.

**ORDER FOR ANSWER AND DENYING WITHOUT PREJUDICE
MOTION FOR HEARING AND APPOINTMENT OF COUNSEL**

This case is before the Court on Defendant's Motion to Vacate Judgment under 28 U.S.C. § 2255 (Doc. No. 98). The case has been referred to the undersigned by Chief Judge Dlott "to deal with all pretrial and post-judgment motions and procedures, whether dispositive or not, and to render a report and recommendation to the Court on any matters classified as dispositive by statute." (Doc. No. 99). Chief Judge Dlott has confirmed that this reference includes Defendant's Motion to Withdraw his Guilty Plea and Dismiss the Case (Doc. No. 71).

Among the matters pending at the time of reference was Defendant's Motion for various types of relief (Doc. No. 97). Defendant's Motion to treat his notice of collateral attack (Doc. No. 91) as a motion is GRANTED. Defendant also seeks appointment of counsel, the granting of an evidentiary hearing, and expansion of the record. That relief is DENIED without prejudice to its renewal once the Court determines if an evidentiary hearing will be held.

The matter is before the Court for initial consideration under Rule 4 of the Rules Governing

§2255 Motions. It does not plainly appear from the face of the motion, the annexed exhibits, and the prior proceedings in the case that Defendant is not entitled to relief.

Accordingly, it is hereby ORDERED that the United States Attorney shall, not later than May 5, 2013, file an answer conforming to the requirements of Rule 5 of the Rules Governing §2255 Cases. Specifically, said answer shall respond to each allegation made in the Motion, raise any affirmative defenses available to the United States, and state whether Defendant has previously received an evidentiary hearing on any of the matters he now raises or whether he is entitled, in the Government's view, to an evidentiary hearing in this proceeding. In addition to responding to the § 2255 Motion (Doc. No. 98), the United States shall respond in the same document to the Motion to Withdraw Guilty Plea and the Pro Se Motion for Collateral Attack.

Defendant may, not later than twenty-one days after the Answer is filed, file and serve a reply or traverse to the Answer. If the Government files a motion to dismiss, Defendant's time to file a memorandum in opposition will likewise be twenty-one days from service, as provided in S. D. Ohio Civ. R. 7.2(a).

March 6, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge